

Industry-Specific Apportionment – Broadcasters

Revenue Laws Study Committee
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Apportionment

- Income of a multistate business is generally apportioned by use of a 3-factor formula
 - Property
 - Payroll
 - Sales (double weighted)
- Numerator consists of property, payroll and sales in NC
- Denominator consists of property, payroll and sales everywhere

Current Industry-Specific Formulas

- Railroads – railway operating revenue
- Telephone Companies – operating revenue from local service
- Motor Carriers – vehicle miles
- Public Utilities – sales factor only
- Air/Water Carriers – revenue ton miles

Numerator: Sourcing Sales to NC

- Sales of tangible personal property received by a purchaser in NC
- Receipts are from real or tangible personal property located in NC
- Receipts from intangible property received from sources in NC
- Receipts from services and the income producing activity is in NC

Issue:

- When the benefit of the service is received in NC but some or all of the service is performed outside NC

Example:

- Non-NC based direct-to-home satellite services business
- Has taxable nexus in North Carolina
- Provides programming services to subscribers in NC
- Argued that none of the receipts from subscribers was includible in the NC sales factor numerator because the service to beam the programming to the satellite was done outside NC

Recommendation

- Adopt Industry-Specific apportionment formula
- 3-factor formula
- Payroll Factor – unchanged
- Property Factor
 - Modify to assign outer-jurisdictional property to the numerator based on the percentage of uplinks or downlinks located in NC, or exclude from the factor altogether.
 - Clarify that mobile or movable property is sourced based on the number of days in NC.

Recommendation

- Sales of tangible personal property – unchanged
- NC sales numerator includes gross receipts from:
 - Programming in release to or by TV and radio stations in NC
 - Programming in release to or by independent or unaffiliated TV or radio stations or a network of stations for broadcast multiplied by an audience factor.
 - Programming in release to or by a cable television system (and direct-to –home satellite services) multiplied by a ratio of subscribers in NC to subscribers everywhere.
 - Sales, rental or licensing of audio or video material intended for home viewing to the extent the purchaser is in NC.

Recommendation

- Audience Factor – ratio of NC audience for a station to the total audience for that station everywhere as determined by the taxpayer's books and records or by reference to rating statistics from sources such as Neilson or Arbitron.

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Questions?